

IN THE SENATE

SENATE BILL NO. 1167

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO WATER; AMENDING SECTION 42-1737, IDAHO CODE, TO PROVIDE THAT PROJECT PROPOSALS RELATING TO THE DIVERSION OF CERTAIN NATURAL FLOW WATER FOR SPECIFIED MANAGED RECHARGE PROJECTS MUST BE SUBMITTED TO THE IDAHO WATER RESOURCE BOARD FOR APPROVAL OR DISAPPROVAL AND TO REFERENCE THE STATE WATER PLAN.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1737, Idaho Code, be, and the same is hereby amended to read as follows:

42-1737. BOARD APPROVAL – CRITERIA – HEARINGS – APPEALS – DEFINING A MISDEMEANOR – INJUNCTIONS. (a) All project proposals involving the impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre-feet, or the diversion of natural flow water appropriated pursuant to section 42-234, Idaho Code, for a managed recharge project in excess of ten thousand (10,000) acre-feet on an average annual basis, shall be submitted to the board for its approval or disapproval. No construction shall be commenced on any such project nor shall any diversion be permitted prior to receipt of board approval as herein provided and the board may institute injunctive proceedings to halt such construction or diversion. In the event a project is disapproved, this fact shall be certified by the board to the director of the department and such certification shall constitute the petition for cancelation of permit required by section 42-302, Idaho Code, and, pursuant to such certification, the procedure for cancelation of permit issued for such project shall be carried forward by said director.

(b) In determining whether a project proposal shall be approved, or disapproved, the board shall be guided by the following criteria:

1. Conserving the highest use of the water for all purposes.
2. The maximum economic development of the waters involved.
3. The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.
4. That sufficient water is available for appropriation for beneficial use.
5. The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.
6. That all vested and inchoate rights to the waters of this state or to the use thereof have been protected by the issuance of a permit for the project by the director of the department.
7. The state water plan and water policy formulated under other laws of this state.

(c) The board shall by regulation, establish procedures for notice and hearing on those project proposals which must be submitted to the board and may authorize hearings by hearing officers. The board or its hearing officer shall have power to administer oaths and to require

1 the attendance of such witnesses and the production of such books, records and papers as
2 it may desire at any hearing and for that purpose the board may issue a subpoena for any
3 witnesses or a subpoena duces tecum to compel the production of any books, records or papers
4 which shall be served and returned in the same manner as a subpoena in a civil case. In case
5 of any disobedience or neglect to obey a subpoena or subpoena duces tecum it shall be the duty
6 of the district court in any county of this state in which such disobedience, neglect or refusal
7 occurs, or any judge thereof, on application by the board, to compel obedience by proceedings
8 for contempt as in the case of a subpoena issued by a regularly constituted court. The sponsor
9 of a project who appears before the board shall have similar powers and shall have the right
10 to be represented by counsel. If the sponsor does not appear at the appointed time, and his
11 absence is without sufficient cause, the board shall have the right to proceed in his absence
12 or may consider absence to constitute an admission of facts contrary to the position of the
13 sponsor. The board shall make findings of fact and conclusions of law leading to its approval
14 or disapproval.

15 (d) Any sponsor of a project which has been disapproved shall have the right to have the
16 proceedings of the board reviewed by the district court in the county of his residence. With the
17 exception that judicial review may be had by the district court of the county of the residence
18 of the sponsor, such judicial review shall be accomplished in accordance with the provisions of
19 chapter 52, title 67, Idaho Code.